

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1492 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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JAYSINH R CHAUHAN

Versus

PRINCIPAL

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Appearance:

MR DIPAK R DAVE for Petitioner  
NOTICE SERVED for Respondent No. 1  
MR SN SHELAT for Respondent No. 2  
MS BR GAJJAR AGP for Respondent No. 3

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 01/05/2000

ORAL JUDGEMENT

I have heard Mr. Dipak R. Dave, learned counsel appearing on behalf of petitioner, Mr. Mazgaonkar, learned counsel for Mr.S.N.Shelat, learned Senior Counsel appearing on behalf of respondent no.2 -Municipal School Board and Ms. B.R.Gajjar, learned AGP appearing on behalf of State -Respondent no.3.

2. It appears that the petitioner was appointed as substitute Teacher at Bapunagar School No.4 on 12th September, 1973. By an order dt.16th September, 1974, the petitioner was appointed as Acting Teacher at Saraspur Hindi Shala No.1 from 18th September, 1974 until the vacancy is filled in by a trained teacher. The petitioner, at the time of his entry in service as Acting Teacher or as substitute teacher, was having qualification of S.S.C.Examination. Thereafter, while he was in service, the petitioner passed his B.A Examination on 19th June, 1978 and had also passed his B.Ed Examination in 1981. The petitioner has not been given scale of pay of a trained teacher, even though he has passed his B.A. and B.Ed examination on the ground that he has not obtained the certificate of Primary Teachers Course which is a certified course. Since the petitioner has not been given the scale of pay of a trained teacher, he has filed this writ petition claiming his scale of pay as trained teacher.

3. The State Government issued the circular that the Primary Teachers appointed prior to 1/1/1977 will get the scale of pay of graduate trained teachers as and when they acquire B.Ed. decree. In the instant case, it is true that the petitioner, when entered in service, was only S.S.C. passed and he obtained his B.Ed. decree in 1978. The ground on which the scale of pay of trained teacher was not given by the Municipality is that the petitioner has not passed the Primary Teacher Course.

4. This question was raised before this court in the case of Satishchandra Bhailalbhai Shah and others Vs. State of Gujarat and this court by judgment reported in 25(1) G.L.R. 655 has held as under:

A person who is qualified to teach Primary Teaching Certificate trainees cannot be said to be not qualified for teaching primary school students. If the petitioners are possessing higher qualification, on that ground they cannot be denied lower posts of trained primary teachers. In any view of the matter when the Government itself has accepted that those teachers who have passed B.Ed. examination prior to January, 1976 are exempted from passing Primary Teaching Certificate examination, by the said order the Government has recognised that qualification of B.Ed. was higher than that of Primary Teaching Certificate and, therefore, B.Ed. teachers should not be compelled to undergo P.T.C. training which will be derogatory

to such teachers.

5. Therefore, the present petitioner being holder of B.A. B.Ed. decree, I am of the view that he cannot be denied pay scale of a trained teacher, simply because he has not passed the Primary Teacher Certificate examination. Consequently, I am of the view that the petitioner is entitled to get the reliefs claimed for. It appears that the interim order was passed by this court on 12/3/1991 for extending the scale of pay as trained teacher to the petitioner, and accordingly the same must have been given to him, and therefore, the petitioner may not have any grievance at this stage. Since the petitioner must have been paid the scale of pay as trained teacher in pursuance of the interim order passed by this court, writ petition has become infructuous. Accordingly the writ petition is disposed of. No order as to costs.

Date: 1/5/2000. (P.K.SARKAR, J.)

ccshah